

Message

From: Minter, Douglas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0C1A47CA3AE847E2B7B818DA4734D7FD-MINTER, DOUGLAS]
Sent: 11/15/2019 2:50:39 PM
To: Chin, Lucita [Chin.Lucita@epa.gov]
Subject: RE: Proposed Rule on Permit Appeal Procedures

Ok thanks!

From: Chin, Lucita <Chin.Lucita@epa.gov>
Sent: Friday, November 15, 2019 6:55 AM
To: Minter, Douglas <Minter.Douglas@epa.gov>
Cc: Bahrman, Sarah <Bahrman.Sarah@epa.gov>; Robinson, Valois <Robinson.Valois@epa.gov>
Subject: RE: Proposed Rule on Permit Appeal Procedures

I'm not sure. As you can see from KC's message below, we are in the dark as well.

Lucita Chin
Senior Assistant Regional Counsel | Office of Regional Counsel | Media Law Counseling Section
Environmental Protection Agency Region 8 | 1595 Wynkoop St. | Mail Code: 8ORC-M | Denver, CO 80202
Office: (303) 312-7832

From: Minter, Douglas <Minter.Douglas@epa.gov>
Sent: Thursday, November 14, 2019 12:40 PM
To: Chin, Lucita <Chin.Lucita@epa.gov>
Cc: Bahrman, Sarah <Bahrman.Sarah@epa.gov>; Robinson, Valois <Robinson.Valois@epa.gov>
Subject: RE: Proposed Rule on Permit Appeal Procedures

Ex. 5 AC/DP

Douglas

From: Chin, Lucita <Chin.Lucita@epa.gov>
Sent: Thursday, November 14, 2019 9:12 AM
To: Minter, Douglas <Minter.Douglas@epa.gov>
Subject: FW: Proposed Rule on Permit Appeal Procedures

Ex. 5 AC/DP

Lucita Chin
Senior Assistant Regional Counsel | Office of Regional Counsel | Media Law Counseling Section
Environmental Protection Agency Region 8 | 1595 Wynkoop St. | Mail Code: 8ORC-M | Denver, CO 80202
Office: (303) 312-7832

From: Schefski, Kenneth <Schefski.Kenneth@epa.gov>
Sent: Wednesday, November 6, 2019 5:05 PM

To: Livingston, Peggy <Livingston.Peggy@epa.gov>; Agee, Erin <Agee.Erin@epa.gov>; Baird, Richard <Baird.Richard@epa.gov>; Bearley, Mia <Bearley.Mia@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Castelli, Kayleen <castelli.kayleen@epa.gov>; Castelli, Matthew <castelli.matthew@epa.gov>; Chalfant, Mark <Chalfant.Mark@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; Chin, Lucita <Chin.Lucita@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>; Eakins, Shaula <eakins.shaula@epa.gov>; Elsen, Henry <Elsen.Henry@epa.gov>; Figur, Charles <Figur.Charles@epa.gov>; Gleason, Michael <Gleason.Michael@epa.gov>; Greenblum, Max <greenblum.max@epa.gov>; Hall, Katherin <hall.katherin@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Jackson, Laurianne <Jackson.Laurianne@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>; Kato, Linda <Kato.Linda@epa.gov>; Laumann, Sara <Laumann.Sara@epa.gov>; Lensink, Andy <Lensink.Andy@epa.gov>; Lindsey, William <Lindsey.William@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>; Madigan, Andrea <Madigan.Andrea@epa.gov>; Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>; Moores, Steven <Moores.Steven@epa.gov>; Muller, Sheldon <Muller.Sheldon@epa.gov>; Naftz, Douglas <Naftz.Douglas@epa.gov>; Odendahl, Steve <Odendahl.Steve@epa.gov>; Perkins, Erin <Perkins.Erin@epa.gov>; Piggott, Amelia <Piggott.Amelia@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Saldenha, Jasmine <Saldenha.Jasmine@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Swanson, Amy <Swanson.Amy@epa.gov>; Thompson, Christopher <Thompson.Christopher@epa.gov>; Varilek, Kimberly <Varilek.Kimberly@epa.gov>; Volk, Everett <volk.everett@epa.gov>; Weiner, Marc <Weiner.Marc@epa.gov>

Subject: RE: Proposed Rule on Permit Appeal Procedures

Thanks Peggy. I hadn't heard anything about the rule since the Regions submitted comments to OGC. I guess we can read the proposal with everyone else.

Ex. 5 AC/DP

K.C. Schefski
Regional Counsel
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

Work: 303.312.6843 | Cell: 303-549-5915 | Fax: 303-312-7202

This email is for the intended recipient only and may contain material that is privileged and/or confidential. If you believe you have received this email in error, please notify the sender. Thank you.

From: Livingston, Peggy <Livingston.Peggy@epa.gov>

Sent: Wednesday, November 6, 2019 4:55 PM

To: Agee, Erin <Agee.Erin@epa.gov>; Baird, Richard <Baird.Richard@epa.gov>; Bearley, Mia <Bearley.Mia@epa.gov>; Boydston, Michael <Boydston.Michael@epa.gov>; Castelli, Kayleen <castelli.kayleen@epa.gov>; Castelli, Matthew <castelli.matthew@epa.gov>; Chalfant, Mark <Chalfant.Mark@epa.gov>; Cherry, Randall <Cherry.Randall@epa.gov>; Chin, Lucita <Chin.Lucita@epa.gov>; Dean, Abigail <Dean.Abigail@epa.gov>; Eakins, Shaula <eakins.shaula@epa.gov>; Elsen, Henry <Elsen.Henry@epa.gov>; Figur, Charles <Figur.Charles@epa.gov>; Gleason, Michael <Gleason.Michael@epa.gov>; Greenblum, Max <greenblum.max@epa.gov>; Hall, Katherin <hall.katherin@epa.gov>; Hammond, Lauren <Hammond.Lauren@epa.gov>; Jackson, Laurianne <Jackson.Laurianne@epa.gov>; Joffe, Brian <Joffe.Brian@epa.gov>; Kato, Linda <Kato.Linda@epa.gov>; Laumann, Sara <Laumann.Sara@epa.gov>; Lensink, Andy <Lensink.Andy@epa.gov>; Lindsey, William <Lindsey.William@epa.gov>; Livingston, Peggy <Livingston.Peggy@epa.gov>; Logan, Paul <Logan.Paul@epa.gov>; Madigan, Andrea <Madigan.Andrea@epa.gov>; Matsumoto, Kimi <Matsumoto.Kimi@epa.gov>; Moores, Steven <Moores.Steven@epa.gov>; Muller, Sheldon <Muller.Sheldon@epa.gov>; Naftz, Douglas <Naftz.Douglas@epa.gov>; Odendahl, Steve <Odendahl.Steve@epa.gov>; Perkins, Erin <Perkins.Erin@epa.gov>; Piggott, Amelia <Piggott.Amelia@epa.gov>; Portmess, Jessica <Portmess.Jessica@epa.gov>; Saldenha, Jasmine <Saldenha.Jasmine@epa.gov>; Schefski, Kenneth <Schefski.Kenneth@epa.gov>; Sutin, Elyana <Sutin.Elyana@epa.gov>; Swanson, Amy <Swanson.Amy@epa.gov>; Thompson, Christopher <Thompson.Christopher@epa.gov>; Varilek, Kimberly <Varilek.Kimberly@epa.gov>; Volk, Everett <volk.everett@epa.gov>; Weiner, Marc <Weiner.Marc@epa.gov>

Subject: Proposed Rule on Permit Appeal Procedures

This was in today's Bloomberg report. It will be on the agenda for the November 12th Ad Lit call.

EPA Seeks to Speed Up Environmental Dispute Process

Nov. 6, 2019, 12:18 PM

- Proposal gives parties option of using alternative dispute resolution
- Changes are consistent with EPA's goal of speeding up permitting

The EPA said Nov. 6 it wants to speed up permit disputes that go before its Environmental Appeals Board.

The Environmental Protection Agency's proposed rule is aimed at settling disputes faster by giving parties the choice of using either alternative dispute resolution or a hearing before the appeals board.

If all parties don't unanimously agree, the permit would become final but could still be challenged in federal court, EPA said.

The EPA's proposal would also eliminate the board's authority to review regional permits on its own, without an appeal from an interested party. It further would strike a provision that lets parties engage in disputes by filing amicus briefs.

The changes match up with the Trump administration's broad effort to speed up environmental permitting, which the administration says will boost economic growth.

"Under President Trump's leadership, we have made the agency more accountable to the public and with this proposal we are continuing to build on that success," EPA Administrator Andrew Wheeler said in a statement. "The agency now works more collaboratively with the states and tribes than it did 27 years ago and the EAB's new role will reflect this reality."

'Skipping a Step'

Environmentalists and their Democratic allies in Congress have long argued that the administration is trying to ram projects through without proper vetting, and to limit communities' right to contest permits.

Stan Meiburg, a former acting deputy EPA administrator in the Obama administration who now teaches at Wake Forest University, said letting parties go straight to judicial review "seems like skipping a step."

He also said he worried about a provision that sets 12-year terms for appeals board judges, who currently serve indefinite terms. That change could make judges who want to continue serving at EPA after their board tenures end "look over their shoulder more than they currently do," Meiburg said.

But Meiburg also said making wider use of alternative dispute resolution is a good idea, because "not everything the agency does is as streamlined as it could have been."

EPA's alternative dispute resolution program has resolved more than 90% of cases without litigation, the agency said.

The amicus brief provision “sounds like they’re trying to cut communities out of the process,” said a former EPA attorney who worked during both Republican and Democratic administrations and who spoke on condition of anonymity.

“Trade associations would like to file those, too,” the ex-attorney said. “But I don’t know what benefit there would be to cutting out amicus briefs.”

Settle Disputes Faster

The business community has long wanted to settle disputes faster, to give themselves more certainty, said Mandy Gunasekara, a former EPA official in the Trump administration.

“You want to do it right, but at some point you have to be able to make a decision and know that that is the final decision and you can make forward,” said Gunasekara, now founder and president of the Energy 45 Fund. “When permits are held up, it means capital is being held up, and capital and investments will only sit so long before it goes somewhere else.”

An overhaul is “definitely needed” because the permitting process is “contentious, litigious, and protracted,” said Diane Katz, senior research fellow at the Heritage Foundation.

The proposal also sets out a process to identify which EAB opinions are considered precedential and lets the EPA administrator issue dispositive legal interpretations on any matter pending before the board.

The EPA is seeking public comment on the proposal within 30 days of publication in the Federal Register.

To contact the reporter on this story: Stephen Lee in Washington at stephenlee@bloombergenvironment.com

To contact the editors responsible for this story: Gregory Henderson at ghenderson@bloombergenvironment.com; Chuck McCutcheon at cmccutcheon@bloombergenvironment.com; Rob Tricchinelli at rtricchinelli@bloombergenvironment.com

Peggy Livingston
Senior Assistant Regional Counsel
Regulatory Enforcement Section
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, CO 80202
303-312-6858 (phone)